

Appl. No.: 10/824,234

Amdt. Dated September 13, 2006

Response to Office Action Mailed July 14, 2006

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## REMARKS:

Applicant appreciates the time and care the examiner has taken in examining the application.

In making the amendments shown above, care has been taken to ensure that the claims remain supported by the specification. No new matter has been introduced. Claims 1-3, 6, 8, 10, 12, and 14-18 have been amended, claim 4 has been cancelled, and new claims 19-23 have been added. New independent claim 19 contains features similar to those of amended claim 3 combined with limitations from cancelled claim 4.

The rejections under Sections 102(e) and 103(a) are respectfully traversed for at least the following reasons with respect to the claims presented herein.

With regard to amended claim 1 and new independent claim 19, it is submitted that the cited reference, Kacyra et al., fails to disclose or suggest at least:

- (1) An angle-measuring portion configured to measure an aimed direction relative to a reference direction,
- (2) An arithmetic processing portion configured to obtain a model based on the aimed direction measured by the angle-measuring portion, design data and positional data of a surveying apparatus body, and

(3) A displaying portion configured to display the model obtained by the calculation with arithmetic processing portion.

In addition, particularly, there is neither teaching nor suggestion in Kacyra et al. with regard to the new limitation of claim 1 and in new claim 19 wherein said arithmetic processing portion is configured to display, according to a change in the aimed direction, said model of the expected arrangement at completion of the object relative to the changed aimed direction on the displaying portion based on detection of said angle-measuring portion. Please note that this is similar to the limitation brought from cancelled claim 4, which has been rejected by the Examiner as being inherent. It is submitted that no sufficient objective evidence or cogent technical reasoning is provided in the final Office Action to adequately support the conclusion of inherency. (See, e.g., *Ex parte Levy*, 17 USPQ2d 1461, 1464 (B.P.A.I. 1990); *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 U.S.P.Q.2d 1746, 1749 (Fed. Cir. 1991)). Clearly, the limitation recited in claim 4 (a new limitation in claim 1 and found in new claim 19) does not necessarily flow from the teachings of Kacyra et al.

With regard to claim 3, in addition to the above-recited features (1) to (3), it is submitted that Kacyra et al. fails to teach or suggest a telescope portion as well as a combination utilizing the telescope portion. Moreover, Kacyra et al. fails to teach or suggest with regard to imaging of a measurement object in an aimed direction viewed by the telescope portion, and displaying of the measurement object imaged by the imaging portion as a real image. Particularly, Kacyra et al. does not teach or suggest the limitation of claim 3 "wherein the arithmetic processing portion is configured to display said model of the expected arrangement at completion of the object on the displaying portion by overlapping said model of the expected arrangement at completion of the object with said real image obtained by the imaging portion through the telescope portion." Accordingly, it is submitted that Kacyra et al. cannot yield the claimed invention of claim 3 whether it is taken singly, or combined with other references or ordinary skill in the art.

All of the dependent claims presented herein are believed to be allowable at least because of their respective dependencies from the independent claims discussed specifically above, for the reasons set forth above.

It is therefore submitted that the invention as claimed is not anticipated under Section 102(e), and that no prima facie case of obviousness has been established with respect to the amended claims and thus the Section 103(a) rejections should be withdrawn. It is respectfully submitted that the application is in condition for prompt allowance and that all of the objections, rejections and requirements raised in the Office action have been met.

*Extension Request and Fee Authorization.* The Commissioner is hereby authorized to charge any fees associated with this communication, including any necessary fees under 37 CFR § 1.17(a) for any necessary extensions of time under 37 CFR § 1.136(a), which are hereby requested, to our Deposit Account No. 50-0305.

Early, favorable treatment of this application is requested. The examiner is encouraged to telephone the undersigned with any questions or comments so that efforts may be made to resolve any remaining issues.

Respectfully submitted,

By: 

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